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8 *Nutrition, Inc.*

9 UNITED STATES DISTRICT COURT  
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
11 OAKLAND DIVISION

12 BRUCE HORTI, SANDRA GEORGE, and  
13 JEANETTE CRAIG,

14 Plaintiffs,

15 v.

16 NESTLÉ HEALTHCARE NUTRITION, INC.,

17 Defendant.

Case No. 4:21-cv-09812-PJH

**DEFENDANT NESTLÉ HEALTHCARE  
NUTRITION, INC.'S NOTICE OF  
PENDENCY OF OTHER ACTION OR  
PROCEEDING**

18 Later-filed action pending in D.N.J.,  
19 No. 3:22-cv-02855, *Owen v. Nestlé  
Healthcare Nutrition, Inc.*

**TO THE COURT AND ALL PARTIES AND THEIR COUNSEL OF RECORD:**

PLEASE TAKE NOTICE that, pursuant to Civil Local Rule 3-13, Defendant Nestlé Healthcare Nutrition, Inc. (“Nestlé”) gives notice that a later-filed action, *Owen v. Nestlé Healthcare Nutrition, Inc.*, Case No. 3:22-cv-02855, was filed on May 16, 2022 in the United States District Court for the District of New Jersey. The matter in this Court was filed December 20, 2021 and is the first-filed action.

These cases involve nearly identical allegations regarding Nestlé’s labeling and marketing of its BOOST Glucose Control, BOOST Glucose Control High Protein, and BOOST Glucose Control MAX 30g Protein nutritional drinks. Much like plaintiffs’ complaint in the above-captioned matter, the plaintiff in *Owen* claims that the BOOST labels would lead a reasonable consumer to believe that the drinks “prevent, treat, and mitigate the effects of diabetes.” *See* Case No. 3:22-cv-02855, Dkt. 1. Both cases are also pleaded as putative class actions.

Nestlé’s deadline to respond to the *Owen* complaint has yet to pass, and Nestlé intends to file with the court presiding over the later-filed *Owen* case a motion to transfer that case from the District of New Jersey to this Court, under the first-filed rule. These cases involve the same issues, overlapping classes, and should both be before this Court to avoid any potential for conflicting rulings, conserve resources, and promote an efficient determination of both actions. The case before this Court is also significantly further along than the *Owen* case, as Nestlé has not yet filed a response to the *Owen* complaint. In the case before this Court, Nestlé’s motion to dismiss has been heard and granted with leave to amend in part, with an amendment deadline of August 2, 2022. Dkt. 27.

Dated: July 12, 2022

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Timothy Loose  
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